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ABSTRACT

The document presents a curriculum module designed to help 11th grade students become intelligent consumers of educational services by focusing on relevant contemporary legal developments. The major goal is to promote students' awareness and understanding of their role as consumers of educational services, their rights and obligations, legal aspects, and ways of influencing educational decisions. Three general topics are treated using hypothetical and actual cases: 1) the right to education and the responsibility to go to school, 2) student constitutional rights relating to freedom of expression, due process, and unauthorized search and seizure, and 3) student and parent involvement in educational decision making. Discussion questions are included in the material for each topic. Time allocation suggested is five days; each day's work is outlined suggesting instructional objectives, general teaching strategies, and needed preparation and homework. Tests include a 20-question opinion pretest and a 20-question multiple choice unit test. Appendices list Constitutional amendments most relevant to students, excerpts from "Educational Law Manual" published by the New York Statewide Youth Advocacy Project, excerpts from actual court cases, three hypothetical cases, a section on employment and drop-out procedures, issues and court comments for teachers to use with advanced students, bibliographies of student and teacher resources, and pretest and unit test answers. (CK)

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CONSUMING EDUCATIONAL SERVICES

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A Curriculum Module

For Eleventh Grade Students

in the State of New York

SP 012 040

Developed by

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CASE No. 04-73

We express our sincere appreciation to Dr. Alan N. Rudnitsky of Smith College for his insightful criticism of the overall design of this module, together with specific suggestions. Joseph Katz, of Roslyn High School, Roslyn, New York, drew on his extensive experience as a high school social studies teacher and made several useful suggestions. We also thank our conscientious staff, Susan Langdon, Kathy Krauss, and Betti Swasey for their assistance, beyond the call of duty.

Preface

For more than a decade the New Careers Training Laboratory has been concerned with the special issues of consuming human services. In the Service Society and the Consumer Vanguard (Harper and Row, 1974), the author and Frank Riessman developed the concept of the "consumer as producer", that is, in education, for example, it is the student who is the ultimate producer of his or her own learning. To become effective producers, students must become aware of their individual learning styles and learning how to learn. These latter topics are discussed in Alan Gartner and Frank Riessman, How to Individualize Learning (Bloomington, Ind.: Phi Delta Kappan Educational Foundation, 1977). In addition to issues intrinsic to the learning process, consumers of education, students, must know their rights and the ways to exercise them.

Here we are pleased to present the work of Professors Louis Fischer and David Schimmel, to whom we are grateful for their efforts and patience, which while focussing upon the rights of students in New York offers a model for such a program nationwide.

Our efforts of this area have been supported and encouraged by Dustin Wilson Director, Office of Consumers' Education, United States Office of Education. And we have learned much in this area from the excellent work of Advocates for Children and its Director, Miriam Thompson, and from Ira Glasser, Samuel Hendler and Rachel B. Gartner.

Alan Gartner

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Rationale

In our industrial civilization, the vast majority of people earn a living rather than make a living. In other words, they do not produce what they need, but rather purchase it. Thus, we have become consumers in all aspects of our lives; we consume goods and services to meet our basic needs.

For some time it has been recognized that it is difficult and demanding to be intelligent, knowledgeable consumers in a modern, mass-producing, impersonal culture. Consequently a variety of institutions, public and private, have been created to protect consumers and to educate them. Many schools have introduced courses, or units within courses, in consumer education. Such courses in general attempt to develop knowledge, attitudes and skills related to the intelligent selection, buying and using of material goods. These would range from items as small but important as toothpaste, soap or sun-tan lotion, to expensive "luxury" items like automobiles, stereos or color television. Such goods pervade our lives and call for intelligent choosing on the part of consumers.

Equally important in our lives and just as pervasive are the various services we consume. We buy and use medical and dental care and governmental services of various kinds, those provided by the police, social service agencies, vocational rehabilitation, education, legal and countless others. Among the services we consume, one that touches our lives in very important ways and through long periods of time is schooling. It is such an important service in our culture that we make it mandatory for everyone during certain years of their lives, and in many localities we make it possible for people to continue their formal education at any

stage of their lives.

It makes good sense in a culture like ours to educate people to become intelligent consumers of human services. We all use these services and pay for many of them with our tax dollars. This unit is based on the conviction that people can and should become more intelligent consumers of the human services that pervade their lives. Specifically, they should become more knowledgeable consumers of schooling, as an important human service.

Since law has become so important in recent years in formulating the rights and responsibilities related to schooling, this unit will draw on relevant, contemporary legal developments. It will address questions related to the right to an education, mandatory attendance and the right not to go to school. Constitutional issues related to students' freedom of expression will be analyzed, along with due process in schools and freedom from unreasonable and unauthorized search. Possibilities for student and parent involvement in the educational process will also be explored.

It is our conviction that knowledge of these aspects of the law, related to education, will be helpful in making people more intelligent consumers of schooling.

Major Goals

1. Students should understand their role as consumers of services, specifically, of educational services.

2. Students should understand their right to a free, publicly supported education, and their obligation to go to school.

3. Students should understand how state and federal constitutions and laws apply to schools.

4. Students should understand how their constitutional rights related to freedom of expression, due process and search and seizure apply to schools and the limitations on such rights.

5. Students should understand how they and their parents can influence educational decisions.

Specific Objectives

1. Students will be able to specify the age of compulsory schooling in the State of New York.

2. Students will be able to differentiate between the right to go to school and the duty to go tc school, and the ages related to each.

3. Students will be able to identify that it is the state constitution and state laws that grant the basic right to education, not federal laws or the national Constitution.

4. Students will be able to describe some school situations where freedom of expression may be limited by school officials.

5. Students will be able to name the key elements of libel.

6. Students will be able to distinguish between an "obscene" statement and vulgar or "dirty" words.

7. Students will be able to identify the limitations on the right to distribute pamphlets or other unauthorized literature in school.

8. Given a hypothetical situation involving a due process issue in school, students will be able to explain whether or not the due process requirement was satisfied.

9. Given a hypothetical situation involving a school-related conflict, students will be able to identify whether or not an issue of free expression is involved.

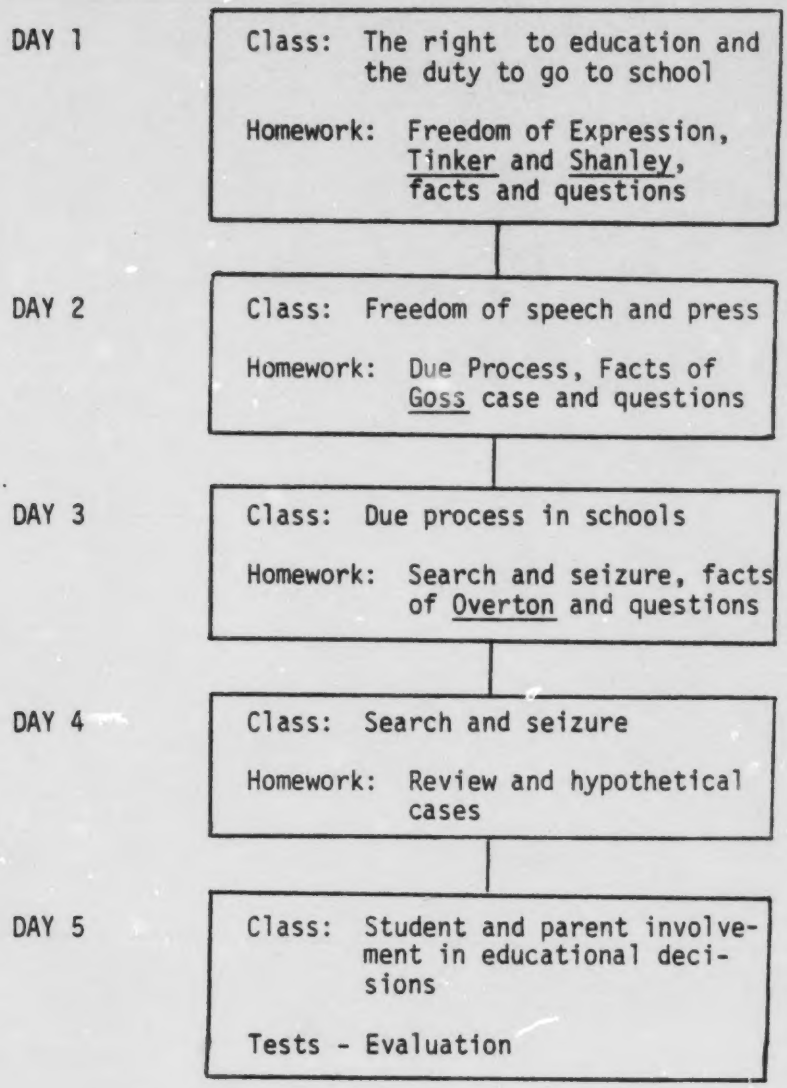
10. Given a hypothetical situation involving a school-related conflict, students will be able to identify whether or not it involves an issue of unauthorized search and seizure.

11. Given a description of an unauthorized search of people and lockers in school, students will be able to explain whether or not the principal proceeded properly.

12. Given a situation that involves disagreement over the curriculum of a school, students will offer at least two possible ways political action might be useful to influence the decision.

13. Students will be able to give at least three reasons why education can be considered to be a "consumer good."

Consuming Educational Services
A Flow Chart For A Five Day Unit


DAY 1
Class: The right to education and the duty to go to school
Homework: Freedom of Expression, Tinker and Shanley, facts and questions
DAY 2
Class: Freedom of speech and press
Homework: Due Process, Facts of Goss case and questions
DAY 3
Class: Due process in schools
Homework: Search and seizure, facts of Overton and questions
DAY 4
Class: Search and seizure
Homework: Review and hypothetical cases
DAY 5
Class: Student and parent involvement in educational decisions
Tests - Evaluation

A General Guide For Teachers

Overview

This unit has three major parts. The first focuses on the right to education in the State of New York as well as the duty to go to school. Even today there are very large numbers of school-age boys and girls who are not in school, some by choice and some against their will. Knowledge of relevant laws will not automatically reduce the numbers of students out of school, but it should help by making them more reflective, critical consumers of this social service.

The second part addresses three areas of students' constitutional rights: freedom of expression, due process, and unauthorized search and seizure. Important controversies surround each of these areas, but recent legal developments provide some guidance. By studying them, students should become more intelligent users of school facilities, programs and extracurricular activities. An important by-product should be a better understanding of everybody's constitutional rights.

The third section relates to student and parent involvement in educational decision making. This section highlights the importance of involvement and of cooperative and political action as means of influencing educational decisions by students and parents.

Time Allocation

The proposed unit can be used in a 3-5 day period, or it can be expanded into longer learning experiences if time and interest warrant it. Teachers who use the unit are in the best positions to make judgments

about how much time is desirable, just as they are in the best position to decide on collateral or supplementary readings, the use of resource people, media aids and other instructional strategies and techniques. The following is but a general guide that assumes a five day, one period per day, time allocation for this unit. Within this five day period, different parts can be shortened or expanded, like an accordion, pursuant to teacher judgment.

First Day

Begin with a brief discussion of the variety of human services we all consume in our daily lives. The class will probably identify quite a few services, some provided by government and some by private sources. Education should be highlighted as one of these important services.

Instructional Objectives: Students will learn:

a. that New York requires school attendance between the ages of 6 and 16, and grants the right to go to school from 5 to 21.
b. that the right to education is extended to all people including the handicapped and those who speak little or no English.
c. that exceptions to the duty to go to school are extremely rare, the Amish being one example, based on their First Amendment claim to religious freedom.
d. that the basic right to education is granted by state not federal laws.

General Teaching Strategies: Students will read the first three paragraphs on page 15 and then, with the teacher's leadership, will discuss the four questions posed. After a few minutes' discussion, they read the next paragraph and again discuss the question posed. Discussion could focus on others known

to students who, like George, left school for various reasons and then found it difficult to return.

Have students finish reading to bottom of page 17.

Raise the question of why our and other societies require children and youth to go to school. After a brief discussion, have students read "Is there a right not to go to school," on page 18 and consider the questions posed. Discuss the questions and if possible have students state arguments for and against the Amish position. Then have them read the Court's ruling.

Briefly look at the questions and answers on page 19, to consider our commitment to the right to education for everyone.

In conclusion, after briefly summarizing the right to education and the obligation to go to school, the teacher can emphasize that education is a human service, one among the many services we each consume. The need for critical, intelligent use of such services can be underscored as a lead-in to the next section.

Preparation and Homework: Students will read page 21, a hypothetical situation related to freedom of expression in schools. After a brief discussion, if time allows it, assign for homework the reading of pages 22, 25, and 26. These contain the facts of the Tinker case and the Shanley case and questions related to the facts. As part of the homework have students prepare written answers to the questions posed. At this point the teacher can differentiate assignments according to the ability of the students. The simplest way to do this is according to the number of questions to be answered. Another way would be to select the more difficult questions for the more able students as well as assign relevant readings from the appendix.

Second Day

Instructional Objectives: Students will learn:

a. that the First Amendment's guarantee of freedom of expression, speech and press apply to public schools.

b. that no right is absolute and under certain circumstances the right to expression may be limited.

c. that school officials may limit expression that leads to substantial disruption of schooling, and expression that is obscene or libelous.

d. that free expression applies to "underground" as well as regular school papers.

General Teaching Strategies: Ask for student volunteers to indicate, briefly, their answers to the homework questions. Give out copies of pages 23-4, 27-8, have students read them, after which the teacher will explain and help discuss the holding of the courts. If time allows have students read the facts, questions and court opinion of the Eisner case. If there is no time for this, give it to the students and have them read it at home, pages 29-34.

Preparation and Homework: Have students read the hypothetical situation related to due process in schools, pages 36-7 and the questions that follow. After a brief discussion, assign for homework the reading of pages 38-9. These contain the facts related to the Goss case and the questions based on these facts. Select some of the questions for students to consider and write answers to, at home.

Third Day

Instructional Objectives: Students will learn:

a. that they have a right to due process, or fair procedures, before they can be suspended, expelled or otherwise disciplined in a serious way.

b. that some kind of notice and hearing are necessary parts of due process.

c. that the due process requirement for short term suspensions can be met by a brief, informal hearing, where they can tell their version of the event to the school official.

d. that "due process" is a flexible concept that requires more careful, formal procedures if the alleged violation is more serious.

General Instructional Strategies: Have students indicate what their answers were to the homework questions. Give out copies of pages 40-42, the court opinion. After students read it, help discuss the ruling of the court. Then explain the New York rules related to suspension and expulsion, presented on pages 43-46.

Preparation and Homework: Have students read and discuss the hypothetical case related to Search and Seizure, on page 47. Assign page 48, the facts of the Overton case, and ask that students consider and write out the answers to the questions that follow. As an alternative assignment, have students discuss with their parents the questions posed and bring in a written summary of their discussion.

Fourth Day

Instructional Objectives: Students will learn:

a. that the Constitution protects us against unreasonable searches by government officials.

b. that the constitutional protection against unreasonable searches has limited application in schools.

c. that their lockers may be searched by administrators who have reason to believe that illegal or dangerous things are in them.

d. that a body search in school receives somewhat greater protection

than a locker search.

General Teaching Strategies: Discuss with students their answers to the homework assignment. Give out copies of page 49, have students read it and help discuss the court opinion in the Overton case. Then have them read page 50 and in class discuss possible answers to the questions raised by Julie and her parents. After this, have students look at the opinion of the court on page 51, together with the New York Guidelines on police search of students and their lockers, pages 52-53.

Homework: By way of review, give students copies of page 81 from the appendix. This presents hypothetical cases related to freedom of expression, due process and search and seizure. Ask them to consider the situations, identify the key issue(s) in each and indicate how the courts are likely to rule and why.

Fifth Day

Instructional Objectives. Students will learn:

a. that the basic decisions about course content and methods of teaching are made by educators and school boards, not by parents or students.
b. that political action by students within a school might be used to gain some influence over the content and methods of schooling.
c. that political action by parents and students outside the school might be used to influence school boards and educators and thus the quality of schooling.

General Teaching Strategies: With the help of students, indicate the answers to the homework questions. Then, have students read the first three paragraphs on page 54 and discuss the questions that follow, to stimulate

students to look at their schooling from a new perspective. By now they should be ready to understand that much learning takes place in schools outside the formal courses as well as in classrooms. The way that freedom of expression, due process, search and seizure and other issues are handled in schools teaches as much, perhaps more, as the course content related to citizenship. After discussing this, read the next paragraph and briefly raise the three questions that follow.

Have students continue reading through the seven examples listed on page 55. Discuss the questions under What Is Your Opinion? page 56, in order to help students realize the importance of political action as well as the time, effort and energy it requires.

Evaluation: Save time for evaluation of what the students learned. In addition to the teacher's own ideas, the Pre-Test can be used as a True-False test, with the "undecided" category removed. The multiple-choice Unit Test in the Appendix can be used with or in place of the True-False Test, and the three hypothetical cases in the appendix can form the basis of essay-type evaluation that can be done in class or at home.

Other Suggestions:

Depending on the time available to the teacher, various other activities can be used to enhance student interest and learning. For example, all the cases, hypothetical or actual, lend themselves to role playing in class, by students. More extensive time allows for mock trials that almost always generate high student interest. Suggestions for mock trials may be available from the Constitutional Rights Foundation (6310 San Vicente Boulevard, Los Angeles, CA 90048), The National Street Law Institute (605G Street, N.W., Washington, D.C. 20001), or from the American Bar Association's Special Committee for Youth Education for Citizenship (1155 East 60th Street, Chicago, Illinois 60637).

Pre-Test: What is Your Opinion?

The following statements are designed to help you express your opinions and stimulate your interest in your rights and responsibilities as a consumer of educational services.

In front of each statement indicate your opinion as follows: A - Agree, U- Uncertain, D - Disagree.

____ 1. The U.S. Constitution guarantees the right to education for everyone between the ages of 6 and 16.

____ 2. The U.S. Constitution requires that we go to school.

____ 3. New York law grants the right to education for everyone between the ages of 5 and 21.

____ 4. If a 14 year old can't speak English, she may stay home and not go to school until she learns it.

____ 5. Since teaching of blind and deaf children is very expensive, a community that has little money does not have to educate them.

____ 6. Freedom of speech is guaranteed outside the schools, but not in schools.

____ 7. Since schooling must be orderly and efficient, administrators may keep all controversial speakers out of schools.

____ 8. High school newspapers may print articles critical of their schools, that may cause controversy and bad feelings.

____ 9. Teachers and administrators may prevent school newspapers from printing vulgar or "dirty" words that offend some people.

____ 10. If your behavior is dangerous to others in the school, school officials can remove you without a notice and a hearing.

____ 11. Before you can be suspended from school for a short period (5 days) you have a right to a notice, hearing, examination of witnesses and a lawyer.

____ 12. Because schooling is compulsory, you can never be expelled.

____ 13. If a high school girl gets pregnant, she can be sent to a special school, with or without her consent.

____ 14. Because a school is public property, teachers or administrators may always frisk you or your locker for drugs, weapons or stolen things.

____ 15. School officials can search your pockets and clothing without a search warrant only if they have good cause to believe you are hiding illegal or dangerous things.

____ 16. Since the Constitution prohibits unreasonable searches, school administrators must get a search warrant before they can examine you or your locker.

____ 17. The law gives parents and students the right to decide what courses a student can take in high school.

____ 18. In New York, an 18 year old student may not be elected to serve on the School Board, because he'd be "the boss of his own teachers."

____ 19. Many schools have students on committees with teachers and parents to advise the school on courses and teaching methods.

____ 20. Political action by students and parents is an important way to influence schools.

The above "Pre-Test" may be used by the teacher to assess prior knowledge by the students, in order to guide instructional activities. It may also be used as a post-test to assess gains made by the students.

The Right to Education

George was a medium built young man, twenty years old, with a slight limp and a stylish mustache. He entered the principal's front office at City High and asked for an appointment. After some waiting around, he was ushered into the office of Mr. Wilson, the vice principal.

Some awkward moments passed between George and Mr. Wilson, but George finally got his message out: "I want to go to school." He explained that he quit school several years ago, spent some time working, then enlisted in the Navy, where his leg was hurt in a training accident. He now wants to finish high school and go on to a technical college.

Mr. Wilson listened with care, took notes and then gave George some friendly advice. The essence of it was that City High is not the right place for George anymore. After all, George is now a man of twenty, not like the 15-18 year old kids at the school. He has seen the world with the Navy and has a steady girl. He should work and go to evening school. Or, as a veteran, why not try to go directly into that technical college. After all, everybody would feel funny with him at City High, George included.

What do you think George should do?
Did Mr. Wilson give him good advice?
What would you do if you were George?
What advice would you give if you were Mr. Wilson?

After his interview with Mr. Wilson, George spent a couple of days thinking, trying to decide what to do. His friends and relatives all gave him advice, but their opinions were all different and that confused him more. He went back to City High and told Mr. Wilson that he still wanted to enroll and start school as

soon as possible. Mr. Wilson checked his past records and looked at school enrollment figures. Then he told George that the senior class he'd be entering is overcrowded as it was. Classes are full and teachers are over-loaded. Therefore, considering George's age, the fact that he had his chance before and didn't use it, and that as a veteran he can get a job, Mr. Wilson regretfully refused to enroll George. George is very unhappy and wants to know what he can do.

Does George have a right to go to school?

Yes, he does. In New York, the state constitution (Article XI, Section 1) requires the legislature "to provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." But is this enough to help George? No, not quite. However, the New York law-makers, following this provision of the state constitution enacted a law, Section 3202 of the Education Law, which says, in part:

> "(1) A person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without payment of tuition."

Does this law help George? It certainly does since he is under 21 and does not have a high school diploma.

But what about the crowded classes? And the fact that the other students will be younger and this will make things awkward for everyone? The right to an education is considered to be so important, that it outweighs all these considerations. If George wants to act on his right to go to school, Mr. Wilson or others may not stop him from doing so.

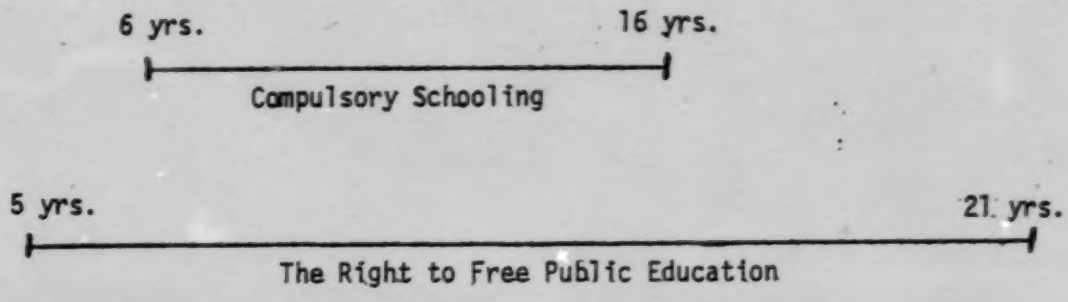
Since the U.S. Constitution does not say anything about education, each state creates its own laws regarding the age of school attendance. As we saw, New York provides free public education for all its people between the ages of 5 and 21. And though each state creates its own laws regarding school attendance, the entire nation considers schooling to be vital. The United States Supreme Court has stated that:

> "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education."*

If George has a right to go to school at the age of twenty, does he <u>have</u> to go? If he doesn't want to go, can Mr. Wilson, the attendance officers, the police or his parents make him go to school? The answer is no.

In New York, Education Law 3205 requires persons between the ages of six and sixteen to attend school full time, with two exceptions. One, if you have completed a four-year high school before that age, or two, if you are under 16 but have a legal employment certificate then you can work and receive part time instruction, but no less than twenty hours per week.

The following chart shows the relationship of the ages during which you have a right to a free public education and during which you must go to school:



* <u>Brown</u> v. <u>Board of Education</u>, 347 U.S. 483 (1954).

Is there a right not to go to school?

From the foregoing, it looks like everybody in New York must go to school from ages 6 to 16 and people may go from 5 to 21 if they hadn't graduated. With such requirements, how can we say that this is a free country? Is there no legal way to avoid compulsory schooling? Suppose you claim that it is against your religion? Isn't religious freedom more important than compulsory schooling?

That was precisely the question raised in a recent case involving the Amish religion and the laws of Wisconsin. Like New York, Wisconsin's laws require attendance till the age of 16. Amish parents and their 14 and 15 year old children didn't want schooling beyond the 8th grade. The Amish are a small and very religious group of people who have lived together in farming communities for over 300 years. They reject the scientific and competitive values of modern life and fear that their children would lose their faith if they were required to attend modern, regional senior high schools. They also fear that their traditional beliefs might be violated by science courses that would question their biblical views. They feel that an elementary education was enough to learn basic skills; after that their children should learn on the job from their parents - in their homes, on their farms and in their shops.

The State or Wisconsin, of course, wanted the Amish children in school with all others.

How would you decide? Why?

How would you decide under the laws of new York if the Amish lived in New York?

The Supreme Court of the United Sites ruled in favor of the Amish. It con-

sidered the right to religious freedeom on the one hand and the compulsory attendance laws on the other. The Court realizes that it is important for the State that its citizens be well educated just as it is important for the individuals themselves. On the other hand, freedom of religion has been important in this country ever since its very beginning. So the Court, trying to reach its decision, had to balance the rights of the Amish religious freedom with the legitimate state laws requiring school attendance to age sixteen.

Many cases that reach the Supreme Court, particularly cases based on constitutional rights, involve rights in conflict. It's not "the good guys against the bad guy," but decent, well-meaning people who disagree. The courts must consider all the interests and reach a conclusion based on reason and the law.

The decision in favor of the Amish was based on the fact that their religion and way of life were closely related, they had practiced their religion for over 300 years, they were economically successful and compulsory schooling through age 16 would threaten their survival. Only in such an extreme case would the Court make an exception to the compulsory education laws.

Do you have a right to go to school if you are pregnant? YES.
Do you have a right to go to school if you get married? YES.
Do you have a right to go to school if you are blind? YES. Deaf? YES.
Otherwise disabled? YES.

Because education is such an important human service in our society, we have passed laws to insure that children and youth have access to education whether they are rich or poor and whatever their race, religion or ethnic

orgin. We also provide free schooling to those with physical or psychological handicaps, and those who speak a language other than English.

FREEDOM OF EXPRESSION

Freedom of Speech

At first, Sue didn't join the anti-nuclear protest. She wasn't a radical; she hadn't even been active in school politics. But now she was in the middle of it - wearing a political button, handing out leaflets, and worrying about being suspended from school.

It all started last year when Sue was a high school junior and wrote a paper for her science class about a nuclear power plant that was being built a few miles from town. Most residents welcomed the plant because they felt it would help solve the town's unemployment problem. But she was against it because she believed the dangers of nuclear power were much greater than most people realized. Therefore, she joined a citizens' action group that tried to stop the project. On weekends, she went to meetings, collected money, and demonstrated with the group.

This year, she wanted to alert her teachers and classmates to the dangers of nuclear power. So she and a dozen friends went to school wearing large buttons with a skull and crossbones that said "Stop Nukes." Since most students favored the facility, the buttons caused a lot of heated arguments between classes and during lunch time.

When the principal learned what happened, he told the students to remove their buttons. He felt the arguments might become disruptive and even cause fights. And he warned the students that if they wore their buttons to school again, they would be suspended.

On her way home, Sue wondered what she should do. Does she have a right to wear her button in school? Or does the principal have the authority to make her leave it home? Can the Bill of Rights help her resolve this conflict? In 1969, the U.S. Supreme Court decided the case of Tinker vs. Des Moines which provided the answers to these questions.

The Tinker Case:* When Is Symbolic Speech Protected?

John Tinker was an 11th grade high school student from Des Moines, Iowa. The year was 1965, and the Vietnam War was raging in southeast Asia. John was 15 years old and strongly opposed to America's participation in the war. In order to publicize his anti-war feelings, John and six other students decided to wear black armbands to school.

When the Des Moines principals learned of this plan, they adopted a policy that prohibited students from wearing the armbands. Since the war was a highly controversial topic in their community, the principals feared that student reaction to the armbands would create a disturbance in the classrooms.

Although he knew about the policy, John Tinker insisted on wearing his armband to school. As a result he was suspended until he would return without the armband. But he and his father believed this policy violated John's constitutional rights, and they took the school officials to court.

1. Should John have been suspended for deliberately disobeying the school policy against wearing armbands? Why or why not?
2. Is an armband a form of speech that is protected by the First Amendment to the Constitution?
3. If a student is entitled to freedom of speech, can a principal sometimes limit this freedom? If so, under what circumstances?
4. Should students have the same freedom of speech in school as out of school? In class as well as in the halls or in the cafeteria?

* Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969).

The Opinion of the Courts

The trial court held that the principals acted reasonably in trying to anticipate and prevent disruption. The students were free to wear armbands out of school. In school, "it is the disciplined atmosphere of the classroom," not the students' right to wear armbands "which is entitled to the protection of the law, " wrote the trial judge; but the U.S. Supreme Court disagreed.

"It can hardly be argued," wrote Justice Fortas, "that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Although school officials must be able to control misconduct, there was no evidence in this case that the wearing of armbands interfered with school work or the rights of other students. The principals may have been sincere in fearing that the armbands might cause problems; but in our system, fear of disturbance "is not enough to overcome the right to freedom of expression."

The Court recognized that freedom in school involves risks. As Justice Fortas wrote:

> "Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken in class, in the lunchroom, or on campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength..."

School officials cannot prohibit a particular opinion merely to avoid "the discomfort and unpleasantness that always accompany an unpopular viewpoint." Therefore, it is unconstitutional to prohibit student expression unless it would "materially and substantially interfere" with school work. In defending student rights, Justice Fortas wrote:

> "School officials do not possess absolute authority over their students. Students in school as well as out of school are possessed of fundamental rights which the State must respect just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate."

The Court explained that the principles of this case are not confined to the classroom. First Amendment rights extend to the cafeteria, the playing fields, and the campus. There too, students may express their opinion on controversial subjects. But student conduct, in or out of class, which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" is not protected by the Constitution.

In sum, there was no evidence in this case that a substantial disruption of school activities was likely, and none occurred. The students wore armbands to express their disapproval of the Vietnam War and to encourage others to adopt their views. They provoked discussion outside of class but caused no interference with school work. "Under these circumstances," concluded the Court, "our Constitution does not permit officials of the State to deny their form of expression."

Freedom of the Press

The First Amendment to the U.S. Constitution prohibits government officials from restricting our freedom of the press. This means that a newspaper publisher cannot be punished even if he is very critical of government officials and their policies. This also means that the police cannot try to censor publications or require that they be submitted for review before they are distributed. The following cases consider whether these same rights apply to students who publish and distribute papers in the public schools.

The Shanley Case:* A Controversial and Negative Publication

In 1972, Mark Shanley and four high school classmates in San Antonio, Texas, were suspended for publishing and distributing an "underground" newspaper entitled "Awakening." The publication discussed current controversial subjects (such as the "injustice" of drug laws); it offered information on birth control, venereal disease, and drug counselling; and it was critical of the schcol administration.

The administration believed the contents of "Awakening" to be "potentially disruptive" and its distribution contrary to school board policy. The policy provided that the production and distribution of any publication "without the specific approval of the principal" shall be cause for suspension.

Mark Shanley and his friends had used their own money and equipment to produce the newspaper. They distributed it peacefully before and after classes without causing any disruption. But they distributed it "without the approval of the principal." Mark and his parents believed that his suspension violated his constitutional rights, and they took their case to court.

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* Shanley v. Northeast Independent School District, 462 F.2d 960 (1972).

1. Should the principal be able to stop students from distributing "Awakening" if he honestly believes that it might cause disruption?
2. Should the principal be able to stop distribution of a newspaper if it discusses topics that most students or parents consider very controversial or disturbing? ...If it is critical, negative, and disagrees with school policy?
3. Is there a difference between freedom of the press in public schools and on public streets? Should school officials be able to limit student newspapers more than city officials can limit commercial newspapers?

The Opinion of the Court

The judge began his opinion by explaining that freedom of expression for students in school is not as extensive as in the community. This is because students are required to attend school, because of disciplinary problems that tend to develop in crowded classes and hallways, and because schools are responsible for teaching a variety of subjects in a limited period of time. Nevertheless, when students question school regulations which restrict their constitutional rights, it is the job of school officials to justify these restrictions. Two legal principles apply to this case: (1) Administrators can limit student expression if it substantially interferes with school activities; (2) Publications by students cannot be prohibited simply because teachers, administrators, parents or other students disagree with their content or object to their style.

Applying these principles to the facts of this case, the judge found that there was no substantial disruption. Second, he ruled that the principal's concern about the controversial topics mentioned in "Awakening" was no reason to restrict the students' freedom of expression. It should be clear, wrote the court, "that in a democracy 'controversy' is...never sufficient in and of itself to stifle the views of any citizen."

To the court, it appeared strange that a school "would boggle at controversy" to such an extent that it would not want students to become informed about such widely discussed and significant issues as birth control, drug use, and venereal disease. The judge commented: "...our recollection of the learning process is that the purpose of education is to spread, not to stifle, ideas and views."

The school administration was also concerned about the negative and critical attitude of the newspaper. Although constructive criticism is more helpful than other sorts, the court noted that almost any effort to explain how schools

can be improved can be useful. If the criticism is unreasonable or unfair, responsible students won't pay much attention to it. In any event, dislike of criticism is no justification for limiting student expression. Freedom of the press is part of the Bill of Rights because citizens who are regulated "should have the right and even the responsibility" of commenting on the actions of officials who regulate them.

The Eisner Case:* Requiring Administrative Approval

The Board of Education of Stamford, Connecticut established the following policy:

> "No person shall distribute any printed or written matter on the grounds of any school or in any school buildings unless the distribution of such material shall have prior approval by the school administration."

The policy further stated that material should not be approved if it will "interfere with the proper and orderly operation and discipline of the school, will cause violence or disorder, or will constitute an invasion of the rights of others."

Jon Eisner and several other Stamford High School students challenged this policy in court. They wanted to distribute their own mimeographed newspaper without having to first get administrative approval. And they argued that the board policy violated their right to freedom of expression.

1. Does the Stamford policy seem clear, fair, and reasonable? If not, how would you rewrite it?
2. Should a school administration be able to review student publications before they are distributed?
3. The policy includes "any printed or written matter." What kinds of material could be included within this policy?
4. How long should school officials be able to take to decide whether ot not to approve distribution? Why is this an important issue for newspaper publishers?

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* Eisner v. Stamford Board of Education, 440 F.2d 803 (1971).

The Opinion of the Court

The Stamford policy was reviewed by the U.S. Court of Appeals for the Second Circuit. This is the court that decides most appeals from the federal courts in New York, Connecticut, and Vermont. On behalf of the court, Judge Irving Kaufman approved some of the Stamford policy but ruled other portions unconstitutional.

The court agreed that the School Board could prevent students from distributing publications on school property that would cause violence or substantial disorder. However, it suggested that the reasons used for approving or not approving publications should be clearer and more specific. The court, for example, noted that the phrase "invasion of the rights of others" was "not a model of clarity or preciseness." It also suggested that the Board clearly describe the kinds of disruptions or distractions that would and would not justify censorship.

Although the court ruled that the Stamford Board could require prior review of student publications, it held that the Board's review procedures were not adequate for several reasons: (1) the procedures provide no limited time in which school officials must decide whether to permit distribution. To be valid, school policy must indicate "a definite brief period" (such as two or three days) within which officials will complete their review of student publications. (Unless review decisions are made quickly, administrators might be able to "kill" a current, controversial story simply by delaying their decision for several weeks.) (2) The policy is also deficient in "failing to specify whom and how material may be submitted for clearance." (3) The prohibition against distributing any printed or written material is "unconstitutionally vague." A constitutional rule should clearly indicate exactly what behavior is prohibited and what is allowed. But the school policy against distributing "any"

printed or written material could include one student passing to another student his copy of a daily newspaper, Time magazine, or a personal note. Such a policy would be unreasonable; it would also be too broad and vague, and therefore unconstitutional. In short, Judge Kaufman ruled that the Board's policy was not enforceable because it failed to provide a brief time or clear procedures for administrative review and because it was too vague and broad in its application.

Is the distribution of obscene or libelous material protected by the Constitution?

No. But a publication is not obscene merely because it contains "dirty" or vulgar words, nor is it libelous merely because it is highly critical of an individual. According to current Supreme Court standards, material for students would be obscene only if it (1) appeals to the lewd or sexual interest of minors, (2) describes sexual conduct in a clearly offensive way, and (3) "lacks serious literary, artistic, political, or scientific value." In applying these tests, the publication must be judged as a whole, rather than by particular passages selected out of context.

A written statement about another person is libelous if it is false and injures the person's reputation (for example, if it leads to a teacher being fired or makes it hard for a principal to get another job). A person who is libeled can sue for damages. But if the person is a public figure (like a movie star, politician or school superintendent), he will not be able to collect unless he can show that the writer knew or should have known that what he said was false. Truth is generally a defense against a libel suit.

In short, student publications can't be banned simply because a school official thinks they are libelous or obscene--because, for example, they criticize the quality of the teachers or use "dirty" words. But material that is, in fact, legally obscene or libelous is not protected by the First Amendment.

Can administrators regulate the time, place, and manner in which publications can be distributed?

Yes. While schools are strictly limited in their ability to control the contents of student publications, they have authority to regulate the mechanics of distribution. The purpose of such regulations is to prevent substantial disruption of school activities. Thus rules may prevent students from distributing publications in crowded hallways, classrooms, on stairways or when they are supposed to be in class.

On the other hand, these rules must be applied fairly and cannot be more restrictive than necessary. Thus a school could not permit distribution only at one exit, only allow one student to distribute an underground newspaper, or prohibit all distribution inside the school building.

Can school officials prohibit students from inviting or listening to controversial speakers?

School officials apparently have authority to prohibit all outside speakers. But according to New York's Guidelines for Students Rights and Responsibilities: "If a school allows some outside speakers to use school facilities, it may not deny other similar speakers the use of these facilities merely because such speakers are deemed controversial or undesirable by school officials."* For example, in a high school where Republican and Democratic candidates were allowed to present their views, it was ruled unconstitutional for the principal to prohibit a Socialist Workers candidate from speaking.

New York's Guidelines point out that school officials "may regulate the times and locations of speeches" and "may require advance notice" to avoid conflicts and provide proper protection. "To insure understanding and compliance," the Guidelines suggest that "regulations pertaining to these matters should be formulated, discussed, and published" well before assemblies are planned and speakers are invited.

Summary

The First Amendment's protection for freedom of expression and of the press applies to students in public schools. Therefore, administrators can't prohibit the publication or distribution of student views just because they are negative, critical, controversial, or unpopular. On the other hand, school officials can

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* Guidelines for Students Rights and Responsibilities, State Education Department, Albany, p. 5.

prevent students from distributing materials that are obscene, libelous, or cause substantial disruption. Furthermore, most courts hold that school rules can require prior review of student publications. But due process requires that rules for administrative review prior to distribution must include: (1) a brief time within which the review (and any appeal) must take place; (2) clearly stated standards--e.g. definitions of obscenity, libel, and disruption; and (3) a reasonable method for appeal. Most policies state that if the time for approval passes without a decision, the material will be considered approved.

Summary

The First Amendment's protection for freedom of the press applies to students in public schools. Therefore, administrators can't prohibit the publication or distribution of student views just because they are negative, critical, controversial, or unpopular. On the other hand, school officials can prevent students from distributing materials that are obscene, libelous, or cause substantial disruption. Furthermore, most courts hold that school rules can require prior review of student publications. But due process requires that rules for review prior to distribution must include: (1) a brief time within which the review (and any appeal) must take place; (2) clearly stated standards--e.g. definitions of obscenity, libel, and disruption; and (3) a reasonable method for appeal. Most policies state that if the time for approval passes without a decision, the material will be considered approved.

These principles apply equally to "underground" papers and to regular school papers paid for by school funds.

Due Process

Introduction

The argument started in Union High School's teachers' lounge. Bill Johnson, a coach and teacher for 15 years, was angry about an 11th grade student who demanded that the principal hold a hearing before suspending him for fighting in class. "That student knew he started the fight," fumed Mr. Johnson, "and it's the second time this year. Just because his father is a lawyer, he's trying to show off and make more trouble." Johnson was fed up with the way students were demanding their rights and the way judges were insisting on due process. "Soon," Johnson predicted, "you won't even be able to suspend a student without first holding a trial. And the next thing you know, students will say they want to consult with a lawyer before talking to the principal about their misconduct.

"What's so bad about a student wanting a hearing before he's judged guilty?" asked Jim Steward, a 28 year old social studies teacher. "Maybe we ought to teach students more about their rights in school. Maybe we should even make this part of the civics curriculum. After all, due process only means fair procedures."

"You're wrong," replied Johnson. "Students know plenty about their rights, but they don't seem to know or care about the rights of other people. The problem is that schools are too permissive and kids have too much freedom. Schools should teach more about responsibilities and less about rights. These days administrators are spending so much time worrying about the rights of kids who are making trouble that they don't have much time left for the good students who come to school to learn. And a lot of the rights you're talking about do more harm than good. Lawyers use rights as a way to keep guilty people out of jail. If you have your way, we'll have to

turn our classrooms into courtrooms, and we'll have no way of getting the troublemakers out of school. I just hope we'll be able to put them all in your class." And with that, Johnson stormed off to class.

As he slowly finished his coffee, Jim Steward wondered whether there was some truth in what Johnson said. Are students less responsible these days? Should students be able to demand a formal hearing before being suspended or expelled? How much due process should we have in the schools? Is there a danger that schools could get too legalistic?

What do you think?

The Goss Case:* When Is Due Process Recognized?

Dwight Lopez was a high school student from Columbus, Ohio. In 1971, he was suspended in connection with a disturbance in the lunchroom which involved some damage to school property. About 75 other students were suspended from his school on the same day. Dwight claimed that he did not participate in the destructive conduct but was an innocent bystander. He was not told why he was suspended or what he was accused of doing; and he never had a hearing.

Dwight and eight other students who were also suspended without a hearing sued Columbus school officials for violating their rights to due process of law. Some of these students were suspended for proven acts of violence. Others, like Dwight, were suspended although they claimed to be innocent of any wrongdoing, and no evidence was presented against them. All were suspended for brief periods of up to ten days.

The school administration argued that due process should not apply to cases of short suspension. Since the U.S. Constitution does not guarantee a right to an education, suspensions do not violate any basic right. Rather suspension is one of the punishments that can be useful in maintaining school discipline. But requiring due process before every suspension would force administrators to spend so much time conducting hearings that they would not have time to do much else. Furthermore, innocent students are rarely suspended. And even if a mistake is made, it could be solved better through conferences between parents, students, and school officials, than by requiring due process procedures in all cases.

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*Goss v. Lopez, 419 U.S. 565 (1975).

1) Should students have a right to due process before being suspended for less than 10 days?
2) If a judge says that students are entitled to due process, what does that mean? Should courtroom procedures be applied in school? What are the advantages and disadvantages of these procedures?
3) Which punishments do you believe are serious enough to require due process? Or should students have a right to due process before any punishment?

The Opinion of the Court

Justice White first pointed out that students cannot be expelled without due process. He acknowledged that the U.S. Constitution does not grant a right to education. But he explained that the Fourteenth Amendment forbids the states from depriving "any person of life, liberty or property without due process of law." If states establish public schools, as New York has done, students have a "property" right in their education which may not be withdrawn on grounds of misconduct without "fundamentally fair procedures."

Second, the Court held that the Due Process Clause applies to cases of short suspension. A suspension for up to 10 days is not so minor a punishment that it may be imposed "in complete disregard of the Due Process Clause," Justice White wrote. The total exclusion from the educational process for more than a trivial period is a serious event in the life of the suspended child." The students in this case were suspended based on charges of misconduct which, if recorded, could damage their standing with their teachers and "interfere with later opportunities for higher education and employment."

The Court then turned to the question of what due process means. Justice White noted that due process is a flexible and practical concept--it does not require a rigid set of procedures to be applied in all situations. However, it requires at least that no one should be deprived of life, liberty, or property without being informed of the charges against him and given an opportunity to be heard. "At the very minimum, therefore, students facing suspension...must be given some kind of notice and afforded some kind of hearing."

The Court then explained the kind of informal notice and hearing that

is required in connection with a suspension of 10 days or less: "that the student is given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." Due process, concluded the Court, "requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary expulsion from school."

The Court recognized, however, that there are school emergencies in which prior notice and hearings would not be required, particularly when there are dangers to persons or property. In such cases, the Court only required that fair procedures be followed "as soon as practicable" after removal of the danger of disruption.

Does this decision mean that schools will now be required to establish formal, lengthy procedures for all suspension? Not at all. For example, there does not have to be any delay between the time notice is given and the time of the hearing. "In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred."

In cases of short suspension, the ruling does not require that students be given an opportunity to secure a lawyer or to call and cross-examine witnesses. But it will reduce the risk of error by alerting administrators to disputed facts which might lead them to investigate further and perhaps call the accuser and witnesses. Indeed, the procedures required by the Court are "less than a fair-minded school principal would impose upon himself," Justice White noted.

In short, the minimum procedures required by Goss can guard against error without too much cost or interference with the educational process.

"It would be a strange disciplinary system," observed Justice White, if a school did not try to inform a student of his misconduct and "let him tell his side of the story in order to make sure that an injustice is not done."

NOTE: Although no school can provide less due process than the Supreme Court requires, state governments and local school districts can provide additional procedural rights. This is the case in New York State. Under state law, short-term suspension applies to any exclusion from school for 5 days or less. Before such a suspension, students are entitled to the 3 elements of due process required by Goss: (a) oral or written notice of the charges, (b) if the student denies the charges, an explanation of the evidence against him, and (c) an opportunity to present his side of the story.

In addition, under New York law, the student and parent have a right to "an informal conference with the principal" at which time the parent may ask questions of the witnesses who made the complaint. Furthermore, many school districts require administrators to promptly notify the parents of students who are suspended--usually by telephone--followed by a letter.

What procedures are required in cases of long suspension or expulsion?

Although the Supreme Court did not rule on this question in Goss, it has indicated that long suspensions or expulsions "may require more formal procedures." This is because due process is a flexible concept that varies according to the possible seriousness of the penalty. When the punishment may be more serious, procedural protections should be more thorough.

In many states, these procedures have been determined by local courts or school boards. But in New York, the state Guidelines and Education Law (section 3214) spell out the detailed rights a student must be given before he can be suspended for more than five days. Specifically, the student and his parent have: (1) the right to "a fair hearing," (2) "reasonable notice" about the hearing, (3) "the right of representation by counsel," (4) "the right to cross-examine witnesses," and (5) "the right to present witnesses and other evidence on his behalf." In addition, the law provides that "a record of the hearing shall be maintained" (either by a stenographer or a tape recorder) which a student can use if he appeals.

According to the New York Guidelines, "persons having direct knowledge of the facts should be called to testify." Hearsay evidence alone is not sufficient; there must be some direct evidence of guilt. Furthermore, the Guidelines state that "the burden of proving guilt rests upon the person making the charges, and the student is entitled to a presumption of innocence of wrongdoing unless the contrary is proved."*

The Guidelines also explain the grounds for suspension, who can make suspension decisions, and the process for appeal. The most frequent basis for suspension is "insubordinate or disorderly" behavior, or conduct that "endangers the safety, morals, health or welfare of others." Decisions to suspend for more than 5 days can be made by the superintendent, not the principal. A student may appeal a superintendent's decision to his board of education and then to the Commissioner of Education.

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*Guidelines for Student Rights and Responsibilities, op. cit., p. 33.

If a school official violates a student's consitutional rights, can the student sue for money damages?

This question was considered by the Supreme Court in the case of Wood v. Strickland in which two students were suspended for three months without due process for spiking the punch at a school dance.* The administrators and school board members said they did what they thought was right and did not intend to violate the students' rights. But the Supreme Court ruled that sincerity or ignorance of the law did not excuse their action.

The Court explained that a person who is responsible for supervising students can not justify violating their rights because he is uninformed about the law. On the contrary, school personnel who discipline students must be expected to act with good intentions and with knowledge of basic student rights. Therefore, the Court ruled that a school official is not free from liability for damages "if he knew or reasonably should have known that the action he took...would violate the constitutional rights of the student affected."

When a student's rights are violated, how will the amount of damages be decided?

In 1978, the Supreme Court answered this question in a case involving two Chicago students who were suspended for 20 days without due process.** Neither student introduced evidence to show any actual damages they had suffered as a result of their suspension. Their lawyer argued that they

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*Wood v. Strickland, 420 U.S. 308 (1975).

**Carey v. Piphas, 46 Law Week 4224 (1978).

should be awarded substantial damages because they were deprived of their constitutional rights, whether or not they suffered any injury. But the Supreme Court disagreed.

The Court ruled that when a student is deprived of his constitutional rights, the amount of money damages should depend on the circumstances of the case. A student should be awarded substantial damages: (1) to deter or punish school officials who intentionally deprive him of his rights or (2) to compensate him for actual injury (which can include "mental and emotional distress" as well as financial loss). But where the violation is not intentional and no actual injury is shown, then the student is only entitled to "the award of a nominal sum of money," like one dollar.

Summary

The Constitutional protection against being deprived of life, liberty or property without due process applies to students in the public school. Due process is a flexible, legal concept that requires fair procedures. The procedures that are due a student vary according to the possible seriousness of the penalties. When the punishment may be more serious, a student is entitled to more thorough procedure.

Due process applies to all cases of suspension and expulsion. In cases of short suspension, a student has the right to know the charges and evidence against him and should have a chance to tell his side of the story. In cases of suspension for more than 5 days, New York law provides detailed procedural rights for students. These include the right to notice and a hearing, representation by counsel, the right to present and cross-examine witnesses, and the right to appeal.

If a student is deprived of his constitutional rights, he can sue school officials for money damages if they knew or should have known that they were violating his rights. But the damages he can collect depend on the circumstances of the case. A student will collect nominal damages for any violation of his rights. He may collect substantial damages only if he can show that he was actually injured or that school officials intended to deprive him of his rights.

SEARCH AND SEIZURE

Bill Thomas was about to finish his first year of high school. The courses had been tougher than he expected; but he worked hard when he had to, and it looked like he'd be getting a B average. So at the end of school, he was planning to relax and celebrate for a few days before starting his summer job. That's why he bought a few "joints." He wasn't a regular user, but he enjoyed smoking pot at parties and on special occasions. And finishing school was one of those occasions.

But very quickly his good feelings collapsed. The principal heard a rumor that a student "dealer" had a big supply of "pot" in a locker in Bill's area and used his pass key to search about 100 lockers. He never found the "big supply," but he did find Bill's few cigarettes.

He notified Bill that he was being suspended for five days for possession of illegal drugs. Worse still, the principal advised Bill that he was turning over this evidence to the police. Bill was really worried. He had never been in serious trouble before. He wished he hadn't bought the cigarettes; but he couldn't believe that this one mistake should cause him to be suspended and perhaps have to go to court. It just didn't seem fair.

When his friend, Nancy, a real "brain," heard of Bill's troubles, she showed him a copy of the Fourth Amendment to the Constitution which says that: <u>The rights of people to be secure...against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.</u> Then she went on to explain that courts have interpreted this amendment to mean that police need either a person's consent or a search warrant (a court order) to search his home, his car, or even a rented locker in a bus station.

Should this amendment prevent school officials from searching students or their lockers without a warrant?

New York v. Overton:* Searching Student Lockers

In Mount Vernon, New York, police detectives showed a search warrant to the vice-principal and asked his help in searching Carlos Overton and another high school student. The detectives searched Carlos and found nothing. They then searched his locker where they found four marijuana cigarettes. But the warrant did not authorize the police to search Overton's locker. Therefore, his lawyer argued that the entire search was illegal, and the evidence found in the locker could not be used against him in court. The police, however, argued that even if the warrant was defective, the evidence could be used because the vice-principal could and did give his consent to search the locker.

1. Should school officials be able to search student lockers? Is searching a student's locker like searching his home or car? What are the similarities and differences?
2. Can you think of some circumstances when school officials ought to search lockers? Are there some when they should not?

The Opinion of the Court

Overton's lawyer argued that the Fourth Amendment's protection should apply to a student's locker and desk just as it applies to his home. But the court did not agree.

The judge held that even if the warrant was not valid, the vice-principal had authority to consent to the search. This is because administrators are responsible for protecting all students and because of the problems that occur in a high school when large numbers of teenagers are gathered together. Moreover, parents who send their children to school have a right to expect that they will be safe and not exposed to harm. Because of the dangers of teenagers using illegal drugs, school officials have an obligation to investigate reports about their possession, use, and sale.

In addition, at Mt. Vernon High School, students knew that the office had their locker combinations. School rules explained what could and could not be kept in lockers, and administrators have authority to inspect lockers to insure that the rules are not broken. According to the court, school officials not only have a right to inspect student lockers, "but this right becomes a duty" when they have a suspicion that something illegal is hidden there.

In short, this case held that if administrators have reasonable suspicion that something illegal is in a locker (1) they have a right to search the locker without a warrant and (2) they have authority to consent to a search by police officials.

*New York v. Overton, 301 N.Y. S. 2d 497 (1969).

Bellnier v. Lund:* Searching the Students

On December 6, 1974, Julie Bellnier and her fifth grade classmates came to school and hung up their coats inside their classroom as usual. A short time later, one of the students said he was missing three dollars from his coat pocket. Since other students had complained of missing money in the past, and since no one had left the classroom that morning, Robert Reardon and another teacher started searching the class.

First, all the coats were searched; then students were asked to empty their pockets. When the money was not found, the students were taken to the boys' and girls' restrooms by a male and female teacher. They were ordered to strip to their underwear, and their clothes were searched. When the money was still not located, the teachers searched the desks, books, and once again the coats. The entire search lasted about two hours, but the missing money was never found.

Julie's parents and several others sued the teachers and administrators for damages because they believed the search of their children was unreasonable and illegal.

1. When is it reasonable for teachers or principals to search students? If they believe that a student possesses something illegal, should this justify a search?
2. Should it be easier to justify searching a locker or desk than searching a student's clothing?
3. Should administrators have more authority to search for illegal drugs or weapons than for missing money?

* Bellnier v. Lund, 438 F.Supp. 47 (1977).

Opinion of the Court

In order to decide whether school officials have reasonable grounds to search a student, the court must balance a number of factors. It must consider the students' right of privacy and the need to protect them against the embarrassment that goes with a search of their clothing. It should also consider the age, history and school record of the students. These factors must be balanced against the seriousness of the problem to which the search is directed, the kind of evidence being sought, and whether there is an emergency that requires an immediate search without a warrant.

Considering the facts of this case, the court concluded that the search was not proper. There may have been a reasonable suspicion that someone in the class had stolen money. But there were no facts which allowed the teachers to suspect any particular student. Since there was "no reasonable suspicion to believe that each student searched possessed...evidence of a crime," the court ruled that the search violated the Fourth Amendment.

In conclusion the judge wrote: "In view of the relatively slight danger of the conduct involved (as opposed to drug possession, for example), the extent of the search, and the age of the students involved, this court cannot in good conscience say that the search undertaken was reasonable."

Would you feel the same, or differently, if $100.00 disappeared from the teacher's desk?

When can police enter schools and question students? When can they search students or their lockers?

According to New York Guidelines, police can enter schools: (1) if a crime has been committed, (2) if they have a warrant for arrest or search, or (3) if

they have "probable cause" to believe that a student is in possession of something illegal.*

In the absence of a warrant or probable cause, police "have no right to interview students in the school building, or to use the school facilities in connection with police work, nor does the board of education have any obligation to make students available to the police." If police wish to speak to a student, in the absence of a warrant or probable cause, they should take the matter up with the student's parents. The Guidelines further state:

> "When police are permitted to interview students in school, the students must be afforded the same rights they have outside school. They must be informed of their legal rights, may remain silent if they so desire, and must be protected from coercion and illegal restraint."

Summary

The Fourth Amendment, which protects citizens against "unreasonable searches and seizures" applies differently in our schools than in our homes. A citizen's home cannot be searched without consent or a valid warrant. But in New York, student lockers can be searched without a warrant if school administrators have reasonable suspicion to believe that something illegal is in the locker. This "reasonable suspicion" also gives them authority to consent to a search by police. In addition, if school officials have reasonable suspicion to believe that a particular student possesses illegal drugs, weapons, or evidence of a crime, they may be able to search the student's clothing. But the Fourth Amendment prohibits administrators from searching student lockers indiscriminately. Moreover, it is more difficult for officials to justify searching student clothing than to

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* Guidelines for Students Rights and Responsibilities, op.cit. p. 37.

justify searching their lockers or desks. Some courts have indicated that body searches without a warrant are unreasonable unless a particular student is suspected and unless there is a serious problem which requires immediate action.

There are different standards for police and school officials in searching students or their lockers without a warrant. For example, police cannot search a student's locker unless they have probable cause to believe it contains something illegal. School officials, however, can search if they have reasonable suspicion. Judges interpret this to mean that police need more evidence to justify a search or seizure requiring "probable cause" than school officials who merely need "reasonable suspicion." In addition, some judges have ruled that evidence obtained by school officials under the "reasonable suspicion" standard can be turned over to police and used in court, even though this evidence would have been excluded in court if obtained directly by police.

Student and Parent Involvement in Education

Students influence what they learn in school in many ways. The way they act in and out of class, the clubs they form, the sports or other activities they support or ignore, all help create a school climate. If you have attended more than one school, you have experienced some differences in school climates. The climate of a school influences new students as they enter, and they, by and large, become part of it and help perpetuate it.

School newspapers and other publications, assemblies, "free speech forums" and other out-of-class activities are important aspects of a school's climate. So are disciplinary procedures, student courts, the way adults relate to students and the way student leaders are chosen.

As we saw in our earlier discussion on freedom of expression, with the right to free speech and free press, students have some opportunities to "teach" and influence other students as well as their teachers and parents. These opportunities occur outside the formal curriculum, in speeches, newspapers and the like. However, there are students who would also like to decide what courses they should take, what should be in those courses and how they should be taught.

> Can you describe some parts of your school's climate?
>
> Would you want to make decisions about your school's courses?
>
> Do you think you are qualified to decide?
>
> Do you have a right to participate in making those decisions?

In general, decisions about courses and how they are taught are in the hands of educators. School boards, administrators and teachers have the legal right and responsibility to decide the goals and content of the courses you take

and the methods by which you are taught. This fact, however, does not necessarily exclude students and parents from involvement in public education. Such involvement may take place in various ways, some of which are listed below:

1. A group of students and their parents have been unsuccessful in getting their high school to teach courses in computer programming. They then organized a campaign and made an impressive presentation to the School Board, resulting in the introduction of such courses into the high school program.

2. A group of high school students was convinced that their preferences were not listened to by their school administrators and not even heard by the School Board. After careful planning, they successfully petitioned the Board to have an elected Student Advisory Board that would have an opportunity to express its views at Board meetings on school issues of interest to students.

3. For quite some time, students expressed dissatisfaction with the curriculum of Hillside High School. They claimed that there weren't enough electives and that the required courses were often outdated and "irrelevant." After several meetings with the administrators of the school and with concerned teachers, a curriculum committee was created, composed of representatives from the faculty, students, administration and the PTA. The task of the committee is to review the curriculum every year and suggest changes.

4. The student government in Glenn High School was convinced that there ought to be more student influence on the curriculum and on teaching methods. With the aid of faculty advisors, they developed a form whereby students could anonymously evaluate the courses they had and make suggestions for their improvement.

5. The student government of South High was frustrated by its inability to make changes in the curriculum. Some of the leaders thought that the school administration just kept them busy with committee work, but never used their ideas. They recommended that the students go on a strike or occupy the principal's office until there was a written promise accepting at least three of their recommendations.

6. The 26th Amendment of the United States Constitution reduced the voting age to 18. Subsequently, the State of New York passed a law making it possible for 18 year old students to serve as an elected member of a School Board. Students old enough to vote, parents and other voters in your local election could elect an 18 year old student to membership on the School Board.

7. Parents, of course, have a right to organize and try to elect members of the School Board who will represent their points of view on educational matters. Through political power, parents can have a great deal to say about schooling.

What is Your Opinion?

Of the seven items above, which would be your preferred way of trying to influence your schools?

Which is your least favorite way?

What are your reasons for your choices?

Which are the most time consuming?

Which generates the most cooperation among the various people interest in schooling?

Can you suggest ways, other than those represented by the seven items above, for students and parents to influence the schools?

Concluding Remarks

We are all consumers of a wide variety of human services. To get the most out of these services, to improve them and even to get the best return on our money, we all need to become more intelligent users of such services. Education is one of these important services we all consume.

In New York, we have a right to go to school and a responsibility to do so. While this right and responsibility is provided by state law, the federal Constitution protects students' freedom of expression and due process in schools and grants some protection against unreasonable searches. None of these rights is absolute and they can all be limited under certain circumstances.

The more students know about their rights and their responsibilities, educational, legal and political, the more power they will have in the intelligent use of schooling as well as other human services.

UNIT TEST

Multiple Choice: place the letter of the best choice in the blank on the left.

_____1. The basic right to education is given:

a. by the U.S. Constitution.
b. by state laws.
c. by the United Nations Charter.
d. by local school boards.

_____2. In New York, you must go to school:

a. until you graduate.
b. from age 5 to 17.
c. from 6 to 16.
d. none of the above.

_____3. You do not have to go to school:

a. if you are mentally retarded.
b. if you can't speak English at all.
c. If you are deaf and blind.
d. none of the above.

_____4. Freedom of speech:

a. is granted by New York state law.
b. is an absolute right.
c. is granted by the U.S. Constitution.
d. does not apply to public schools.

_____5. Controversial speech in schools:

a. can be prevented by administrators to maintain a calm atmosphere.
b. is only for school assemblies so both sides can be heard.
c. is for social studies classes only.
d. can be restricted if there is substantial disruption of the learning process.

_____6. Armbands, buttons and other symbols:

a. are protected the same as actual speech.
b. are symbolic speech and are protected.
c. can be restricted if they cause substantial disruption.
d. all of the above.

UNIT TEST -

_____7. School newspapers:

a. can be censored by faculty advisors.
b. can be censored by schools if they pay for the paper.
c. can be censored only by majority vote of everyone in the school.
d. none of the above.

_____8. School newspapers:

a. can be obscene as long as they are not dirty.
b. have absolute freedom of the press.
c. must not print obscene or libelous matters.
d. have more freedom than underground newspapers.

_____9. School newspapers:

a. can never be controlled by teachers or administrators.
b. can back one political candidate and ignore all others.
c. must never write about religion or sex.
d. none of the above.

_____10. Before a school can suspend you:

a. you should know why and have a chance to explain your side of the matter.
b. there must be a written statement of the charges against you.
c. your parents must have a chance to talk with the principal.
d. none of the above.

_____11. In school punishment, due process:

a. is required by law, therefore it's always the same.
b. is a flexible idea and can be satisfied by different practices.
c. applies only to criminal matters.
d. none of the above.

_____12. Due process in schools:

a. must be more thorough if the violation is more serious.
b. must be used only if the School Board requires it.
c. must be granted only if your parents request it.
d. is for students over 18 years old.

UNIT TEST -

_____13. Due process in schools:

a. is required if you disagree with a grade your teacher gave you.
b. is required if you can't get into a class you want.
c. is required if they want you to go to a guidance conference against your wishes.
d. none of the above.

_____14. The high school principal:

a. may search school lockers whenever he wishes.
b. may never search lockers without permission.
c. must announce when he'll search lockers.
d. none of the above.

_____15. School lockers may be searched by administrators:

a. only if they assign or rent you the locks.
b. only if they have search warrants.
c. if they have reason to suspect you have illegal or dangerous things in them.
d. if the police request the search.

_____16. School officials:

a. may never do a "body search."
b. may do a "body search" only with a search warrant.
c. may do "body searches" just like locker searches.
d. are more limited in "body searches" than in locker searches.

_____17. The Constitutional protection against unauthorized search and seizure:

a. does not apply to schools at all.
b. applies in schools the same as anywhere else.
c. applies in schools but not as strictly as outside of schools.
d. none of the above.

_____18. High school students:

a. have a right to criticize their schools.
b. are consumers of education just like they are consumers of food.
c. consume a variety of human services.
d. all of the above.

UNIT TEST -

____19. A written statement is legally obscene:

a. if it uses dirty words.
b. if it is considered vulgar by local citizens.
c. if it describes violence in revolting ways.
d. none of the above.

____20. A student may sue school officials for money damages:

a. if his/her clearly established constitutional rights were violated.
b. only if the violation of a right is intentional.
c. only if there was actual damage suffered.
d. only with the consent of the Board of Education.

Appendix A

CONSTITUTIONAL AMENDMENTS MOST RELEVANT TO THE RIGHTS OF STUDENTS

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

Section 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PROPOSED EQUAL RIGHTS AMENDMENT

Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Appendix B

Excerpts from "Educational Law Manual"
published by the Statewide Youth Advocacy Project
429 Powers Building
Rochester, New York 14614

THE RIGHT TO FREE PUBLIC EDUCATION IN NEW YORK STATE

The New York State Constitution in Article XI, Section 1, requires the legislature of this state "to provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." The legislature, pursuant to this mandate, has enacted Section 3202 of the Education Law, which provides, in part:

> "(1) A person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition."

The statute permits boards of education, however, to refuse admission to a five year old after the beginning of a school year unless he reaches the age of five on or before the first day of December.

It is important to remember that the right to education in New York State is a broad one extended generally to persons between the ages of five and twenty-one. It is not a right which is "conditional" upon a person's being subject to compulsory education laws.

The basis of the right to education are numerous and may be found, with respect to special groups, in a variety of legal provisions. Many of these provisions -- such as those concerning Title I, bilingual education, race and sex discrimination, education of the handicapped and student discipline -- are discussed in other parts of this manual.

2. Compulsory Education

Various legal provisions refer to persons of "compulsory attendance age," or to persons required to attend school in accordance with Part I of Article 65 of the Education Law. The requirements of Part I of Article 65 are briefly the following:

a. Full-time Instruction

Persons aged from six to sixteen are required to attend full-time instruction pursuant to Education Law §3205, subject to two exceptions:

(1) a person who completes a four-year high school course of study is not subject to any of the compulsory education provisions in Part I of Article 65 of the Education Law;

(2) a minor who has applied for and is eligible for a full-time employment certificate, though he is unemployed, may be permitted to attend part-time rather than full-time instruction, but must receive not less than twenty hours of instruction per week. (For a fuller discussion of employment certificates and dropout procedures, see pages 34-36 of this manual.)

In addition to this statewide mandate, Section 3205 of the Education Law authorizes, but does not require, the board of education in each city of the state (and in union free school districts having more than 4,500 inhabitants and employing a superintendent of schools) to require persons from sixteen to seventeen years of age who are not employed to attend full-time day instruction.

b. Part-time Instruction

Section 3207 of the Education Law provides that in each city and school district in which evening instruction is provided, each person aged seventeen to twenty-one who is unable to speak, read and write English as required for the completion of the fifth grade, and who is not attending equivalent day instruction must attend evening instruction.

The board of education of a city or district is also authorized to require attendance in a part-time instructional program. Section 3206 of the Education Law authorizes the board of education of a city or district (except with respect to graduates of a four-year course of secondary instruction):

(1) to require each employed minor from sixteen to seventeen years of age to attend a part-time instructional program; and

(2) to require each person over the age of sixteen and under the age of eighteen who is not in regular full-time attendance in day school, or who is regularly and lawfully employed, to attend part-time instruction.

Persons who are "in parental relation" to and in control of someone under the age of twenty-one are required to make sure that the individual attends required instruction. (Education Law §§3212, 3232-3233). In some cases the child may be subject to the PINS (Persons in Need of Supervision) jurisdiction of Family Court, or the parent subject to charges of neglect, based upon inadequate attendance.

The State Commissioner of Education is required to supervise and enforce all sections of Part I of Article 65 of the Education Law; he is also authorized to withhold funds from school districts, which after receiving notice, willfully omit and refuse to enforce the provisions of that part. (Education Law §3234). The legal provisions subject to such enforcement include the sections dealing with attendance services and employment certificates. (See pages 31-37 of this manual.)

Appendix E

b. Employment Certificates and Drop-out Procedures

As noted earlier, there generally comes a time in a child's education -- usually before graduation from high school -- when, though the law still entitles him or her to a free public education, it no longer compels his or her attendance. Having attended school for a decade and only a few credits away from graduation, the student -- still a minor -- has thrust upon him or her the option to terminate his or her educational career.

The legislature has done far less than it might to secure, for these children, the right "to educational opportunities which will enable (them) to develop (their) fullest potentialities for education, physical, social and spiritual growth as (individuals)..." (Education Law §3213(1)(a)).

The legislature has created, however, some fairly rigorous and enforceable legal provisions regarding the issuance of employment certificates to persons under eighteen years of age (Education Law §§3215-3234). These provisions serve a dual purpose -- for a child of compulsory attendance age these laws help to ensure that he will receive instruction, and generally, for all children under eighteen their purpose is to "insure that an employer will not hire a minor without the knowledge of the Board of Education and its assent thereto as manifested by the employment certificate..." Sacripante v. United Metal Spinning Co. 299 N.Y. 419 (1949). Not by accident, the legislature has given educational rather than labor authorities supervision over the issuance of employment certificates. This legislative choice must impose upon school authorities the responsibility of providing some counseling prior to the issuance of a certificate, to ensure that a careful, informed decision is made.

Although some employment (e.g., babysitting when school attendance is not required) may be performed without an employment certificate, the general rule

is that no person under eighteen years of age may be employed unless he or she has and presents an appropriate employment certificate, and in any case, no person under eighteen may be employed during the hours when school attendance is required by the compulsory education law. (Education Law §3215).

Briefly, there are five major types of employment certificates:

(1) the non-factory employment certificate, which may be issued to a minor fourteen and fifteen years of age who is attending day school;

(2) the student general employment certificate, which may be issued to a minor sixteen or seventeen years of age who is attending day school (valid for factory as well as for other trade, business or service employment);

(3) the full-time employment certificate, which may be issued only to a minor sixteen or seventeen years of age who is not attending day school or who declares his intention to leave day school for a full-time employment, or to a minor who is graduate of a four year high school;

(4) the limited employment certificate (further limiting otherwise permissible employment to a particular employer and occupation based upon physician's determination of a minor's limited physical fitness); and

(5) the special employment certificate, which may be issued to a minor fifteen years of age found "incapable of profiting from further instruction" in accordance with the exemption-from-attendance provision of the Education Law (discussed at p. 49 of this handbook) and regulations of the Commissioner of Education, and only then upon compliance with the special requirements established for issuance of a full-time employment certificate (not valid for factory employment).

It is illegal for a school official to issue any type of employment certificate without evidence of age, a physician's certificate of physical fitness, and the written consent of the parent or guardian. (Education Law §3217).

Furthermore, it is illegal for a school official to issue a full-time or special employment certificate unless a "schooling record" (Education Law §3222)

is submitted, and unless the parent or guardian of a minor who has not yet graduated from high school appears in person before the issuing official to consent to the issuance of such a certificate (Education Law §3219).

In any district in which the board of education makes full-time day attendance compulsory for minors from sixteen to seventeen years of age who are not employed, it is illegal for a school official to issue a full-time or special employment certificate unless the student submits a signed "pledge of unemployment," including the times, nature and type of employment anticipated. (Education Law §§3217, 3221).

The legal provisions governing the issuance of employment certificates underscore the importance of safeguarding the right to education -- 'even' for children whose attendance is not compulsory. These provisions, like those governing compulsory attendance, are required to be enforced by the State Commissioner of Education, who, after due notice, may withhold one-half of all public school monies from any city or district which willfully omits and refuses to enforce them. (Education Law §3234; see also §§3232-33).

Plainly, if such guidelines must be followed before a district may take steps necessary -- in most cases -- to enable a minor to reduce the amount of his instructions to obtain employment, reason would demand that even greater safeguards be taken before a school district condones any drastic reduction in the instruction of a non-high school graduate where immediate employment is not anticipated. The implementation of a procedure requiring, at a bare minimum, a conference with the parent or guardian as well as with the potential dropout before a student over compulsory attendance age could be voluntarily "dropped," would be relatively simple and is obviously both necessary and desirable in view of rising "dropout" rates.*

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*Where a "drop" is not voluntary, and therefore amounts to a suspension, the due process procedures applicable in suspension cases should be insisted upon.

Appendix C

Excerpt From:

TINKER v. DES MOINES
Feb. 24, 1969

Mr. Justice Fortas delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired—that is, until after New Year's Day.

I.

As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

In West Virginia State Board of Education v. Barnette, the Court said:

> "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

In the present case, school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit, said, school officials cannot suppress "expressions of feelings with which they do not wish to contend."

In Meyer v. Nebraska, Mr. Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:

> "In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and entrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any Legislature could impose such restrictions upon the people of a state without doing violence to both letter and spirit of the Constitution.

This principle has been repeated by this Court on numerous occasions during the intervening years. Mr. Justice Brennan, speaking for the Court, said:

> "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues,' [rather] than through any kind of authoritative selection."

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech.

Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school.

These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeves a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Mr. Justice Black, dissenting.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools * * *" in the United States is in ultimate effect transferred to the Supreme Court.

Assuming that the Court is correct in holding that the conduct of wearing armbands for the purpose of conveying political ideas is protected by the First Amendment, the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech—"symbolic" or "pure"—and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent.

While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war. [And I repeat that] if the time has come when pupils of state-supported schoools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.

I deny [therefore,] that it has been the "unmistakable holding of this Court for almost 50 years" that "students" and "teachers" take with them into the "schoolhouse gate" constitutional rights to "freedom of speech or expression." The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite.

In my view, teachers in state-controlled public schools are hired to teach there . . . certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public. The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders. It may be that the Nation has outworn the old-fashioned slogan that "children are to be seen not heard," but one may, I hope, be permitted to harbor the thought that taxpayers send children to school on the premise that at their age they need to learn, not teach.

Change has been said to be truly the law of life but sometimes the old and the tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us tranquility and to making us a more law-abiding people. Uncontrolled and uncontrollable liberty is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens. Here a very small number of students have crisply and summarily

refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands to attend classes in order to exercise their political pressures. Turned loose with lawsuits for damages and injunctions against their teachers as they are here, it is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools rather than the right of the States that collect the taxes to hire the teachers for the benefit of the pupils. This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,390 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

Excerpts From:

GOSS v. LOPEZ

Jan. 22, 1975

Mr. Justice White delivered the opinion of the Court.

This appeal by various administrators of the Columbus, Ohio, Public School System ("CPSS") challenges the judgment of a three-judge federal court, declaring that appellees—various high school students in the CPSS—were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

Two named plaintiffs, Dwight Lopez and Betty Crome, were students at the Central High School and McGuffey Junior High School, respectively. The former was suspended in connection with a disturbance in the lunchroom which involved some physical damage to school property. Lopez testified that at least 75 other students were suspended from his school on the same day. He also testified below that he was not a party to the destructive conduct but was instead an innocent bystander. Because no one from the school testified with regard to this incident, there is no evidence in the record indicating the official basis for concluding otherwise. Lopez *never had a hearing.*

Betty Crome was present at a demonstration at a high school different from the one she was attending. There she was arrested together with others, taken to the police station, and released without being formally charged. Before she went to school on the following day, she was notified that she had been suspended for a 10-day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Betty Crome nor does it disclose on what information the decision was based. It is clear from the record that *no hearing* was ever held.

At the outset, appellants contend that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty or property without due process of law. Protected interests in property are normally "not created by the Constitution. Rather, they are created and their dimensions are defined" by an independent source such as state statutes or rules entitling the citizen to certain benefits. Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause.

The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the clause must be satisfied. School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

Appellants proceed to argue that even if there is a right to a public education protected by the Due Process Clause generally, the clause comes into play only when the State subjects a student to a "severe detriment or grievous loss." The loss of 10 days, it is said, is neither severe nor grievous and the Due Process Clause is therefore of no relevance. Appellee's argument is again refuted by our prior decisions; for in determining "whether due process requirements apply in the first place, we must look not to the 'weight' but to the *nature* of the interest at stake."

A short suspension is of course a far milder deprivation than expulsion. But, "education is perhaps the most important function of state and local governments." . . . and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for 10 days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.

III.

"Once it is determined that due process applies, the question remains what process is due." At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given *some* kind of notice and afforded *some* kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified."

The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device.

The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done.

We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.

There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is.

Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated.

In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the fact-finding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

IV.

The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is *Affirmed*.

Mr. Justice Powell, with whom The Chief Justice, Mr. Justice Blackmun, and Mr. Justice Rehnquist join, dissenting.

The Court today invalidates an Ohio statute that permits student suspensions from school without a hearing "for not more than ten days." The decision unnecessarily opens avenues for judicial intervention in the operation of our public schools that may affect adversely the quality of education. The Court holds for the first time that the federal courts, rather than educational officials and state legislatures, have the authority to determine the rules applicable to routine classroom discipline of children and teenagers in the public schools. It justifies this unprecedented intrusion into the process of elementary and secondary education by identifying a new constitutional right: the right of a student not to be suspended for as much as a single day without notice and a due process hearing either before or promptly following the suspension.

In an age when the home and church play a diminishing role in shaping the character and value judgments of the young, a heavier responsibility falls upon the schools. When an immature student merits censure for his conduct, he is rendered a disservice if appropriate sanctions are not applied or if procedures for their application are so formalized as to invite a challenge to the teacher's authority—an invitation which rebellious or even merely spirited teenagers are likely to accept.

The lesson of discipline is not merely a matter of the student's self-interest in the shaping of his own character and personality; it provides an early understanding of the relevance to the social compact of respect for the rights of others. The classroom is the laboratory in which this lesson of life is best learned.

In assessing in consitutional terms the need to protect pupils from unfair minor discipline by school authorities, the Court ignores the commonality of interest of the State and pupils in the public school system. Rather, it thinks in traditional judicial terms of an adversary situation. To be sure, there will be the occasional pupil innocent of any rule infringement who is mistakenly suspended or whose infraction is too minor to justify suspension. But, while there is no evidence indicating the frequency of unjust suspensions, common sense suggests that they will not be numerous in relation to the total number, and that mistakes or injustices will usually be righted by

informal means.

One of the more disturbing aspects of today's decision is its indiscriminate reliance upon the judiciary, and the adversary process, as the means of resolving many of the most routine problems arising in the classroom. In mandating due process procedures the Court misapprehends the reality of the normal teacher-pupil relationship. There is an ongoing relationship, one in which the teacher must occupy many roles—educator, adviser, friend and, at times, parent-substitute. It is rarely adversary in nature except with respect to the chronically disruptive or unsubordinate pupil whom the teacher must be free to discipline without frustrating formalities.

We have relied for generations upon the experience, good faith and dedication of those who staff our public schools, and the nonadversary means of airing grievances that always have been available to pupils and their parents. One would have thought before today's opinion that this informal method of resolving differences was more compatible with the interests of all concerned than resort to any constitutionalized procedure, however blandly it may be defined by the Court.

No one can foresee the ultimate frontiers of the new "thicket" the Court now enters. Today's ruling appears to sweep within the protected interest in education a multitude of discretionary decisions in the educational process. Teachers and other school authorities are required to make many decisions that may have serious consequences for the pupil. They must decide, for example, how to grade the student's work, whether a student passes or fails a course, whether he is to be promoted, whether he is required to take certain subjects, whether he may be excluded from interscholastic athletics or other extracurricular activities, whether he may be removed from one school and sent to another, whether he may be bused long distances when available schools are nearby, and whether he should be placed in a "general," "vocational," or "college-preparatory" track.

In these and many similar situations claims of impairment of one's educational entitlement identical in principle to those before the Court today can be asserted with equal or greater justification.

If, as seems apparent, the Court will now require due process procedures whenever such routine school decisions are challenged, the impact upon public education will be serious indeed. The discretion and judgment of federal courts across the land often will be substituted for that of the 50-state legislatures, the 14,000 school boards and the 2,000,000 teachers who heretofore have been responsible for the administration of the American public school system. If the Court perceives a rational and analytically sound distinction between the discretionary decision by school authorities to suspend a pupil for a brief period, and the types of discretionary school decisions described above, it would be prudent to articulate it in today's opinion. Otherwise, the federal courts should prepare themselves for a vast new role in society.

Excerpts From:

SZUNIER v. LUND

434 F.Supp. 47 (1977)

United States District Court,
N. D. New York.
July 11, 1977.

MEMORANDUM-DECISION AND ORDER

MUNSON, District Judge.

On the morning of December 6, 1974, plaintiffs and their classmates, members of the fifth grade class at Auburn's Lincoln Elementary School, arrived at the classroom in their usual fashion. Each of the students entered the classroom and placed his outer garment in a coatroom located wholly within, and accessible only from, the classroom itself. The teacher of the class, defendant Reardon, stood at or near the classroom door during this time while the student teacher, defendant Olson, remained inside the classroom. Once inside the room, no student left prior to the alleged search now the subject of this action.

Sometime that morning, and prior to the commencement of class, plaintiff Leonti complained to defendant Olson that he was missing $3.00 from his coat pocket. Plaintiff Leonti stated that he was sure that he had $4.00 when he arrived at school, showing defendant Reardon the four raffle ticket stubs indicating sales proceeds in the amount of $4.00, only $1.00 of which remained in Leonti's pocket.

An appeal by defendant Reardon to the class regarding knowledge of the missing money proved fruitless. Being aware of prior complaints from class members of missing money, lunches, and other items, and knowing that no one had left the classroom that morning, defendant Reardon commenced a search of the class, with the aid of fellow teachers and school officials, all of whom are named as defendants herein.

The outer garments hanging in the coatroom were searched initially. The students were then asked to empty their pockets and remove their shoes. A search of these items failed to reveal the missing money. The class members were then taken to their respective restrooms, the girls to the girls' room by defendants Olson and Butcher, and the boys to the boys' room by defendants Reardon, Parker, and Lund. The students were there ordered to strip down to their undergarments, and their clothes were searched.[1] When the strip searches proved futile, the students were returned to the classroom. There, a search was conducted of their desks, books, and once again of their coats.

The entire search lasted approximately two hours, with the strip searches taking about fifteen minutes. The missing money was never located. . .

FOURTH AMENDMENT

A. Applicability

There can be no doubt that, as the plaintiffs state, the notion that an infant student sheds all of his constitutional rights when he enters the school house door is steadily being dispelled by the courts.

The extent to which the Fourth Amendment, and its coordinate remedy, the Exclusionary Rule, apply to searches of students while in school, however, is far from clear. . . . The cases which have dealt with the issue have reached diverse results, relying upon various theories, which can be generally placed into the following categories: 1) the Fourth Amendment does not apply, as the school official acted *in loco parentis* (private search); . . . 2) the Fourth Amendment applies, but the Exclusionary Rule does not; 3) the Fourth Amendment applies, but the doctrine of *in loco parentis* lowers the standard to be applied in determining reasonableness of the search; . . .

4) the Fourth Amendment applies in full, requiring a finding of probable cause in order for a search to be reasonable.

There are few federal cases dealing with the subject of student strip searches, and unfortunately those cases cited by both parties in their memoranda, clearly hinged in their holdings upon police involvement in the searches, a factor not present in this case. As stated by the Court in *Potts*,

> If the school officials have absolutely no authority under state law to search any individual, their searching of students without the aid of the police would be a battery or possibly an invasion of the right of privacy under state law, and would not constitute a civil rights violation.

In *Moore v. Student Affairs Committee of Troy State University*, 284 F.Supp. 725 (M.D.Ala.1968), a case involving a dormitory room search at a state university, a balance was struck between the Fourth Amendment and the responsibilities of the university with regard to maintaining discipline, resulting in a lesser standard than probable cause being applied to determine the reasonableness of the search. Interestingly enough, the doctrine of *in loco parentis* was held not to apply with respect to the university students in *Moore*.

This Court finds the reasoning utilized in *Moore v. Student Affairs Committee of Troy State University*, *supra*, and *State v. Young*, *supra*, that of applying the Fourth Amendment but with a lesser standard than probable cause with respect to student searches, to be the more persuasive. Whether or not the Exclusionary Rule is coextensive with the Fourth Amendment, and hence applicable in a criminal action based upon a search such as that now in issue, is subject to considerable speculation.

3. Standard

In finding that the Fourth Amendment does apply in this case, this Court does not mean to imply that a showing of probable cause is necessary in order to uphold the search as reasonable. In analyzing the search to determine reasonableness, the Court must weigh the danger of the conduct, evidence of which is sought, against the students' right of privacy and the need to protect them from the humiliation and psychological harms associated with such a search. In doing so the Court must take into account the special duties and responsibilities imposed upon school officials to provide a safe atmosphere for a student to develop, the attendant limited powers which the school officials possess *in loco parentis* to effectuate the maintenance of proper discipline.

This Court holds that, while there need not be a showing of probable cause in a case such as this, there must be demonstrated the existence of some articulable facts which together provided reasonable grounds to search the students, and that the search must have been in furtherance of a legitimate purpose with respect to which school officials are empowered to act, such as the maintenance of discipline or the detection and punishment of misconduct. In making such an analysis, some factors which warrant consideration are: 1) the child's age; 2) the child's history and record in school; 3) the seriousness and prevalence of the problem to which the search is directed; and 4) the exigency requiring an immediate warrantless search.

On balance, the facts of this case mitigate against the validity of the search in issue. It is entirely possible that there was reasonable suspicion, and even probable cause, based upon the facts, to believe that someone in the classroom had possession of the stolen money. There were no facts, however, which allowed the officials to particularize with respect to which students might possess the money, something which has time and again, with exceptions not relevant to this case, been found to be necessary to a reasonable search under the Fourth Amendment.

For this reason, the search must be held to have been invalid under the Fourth Amendment, there being no reasonable suspicion to believe that each student searched possessed contraband or evidence of a crime.

The Court is not unmindful of the dilemma which confronts school officials in a situation such as this. However, in view of the relatively slight danger of the conduct involved (as opposed to drug possession, for example), the extent of the search, and the age of the students involved, this Court cannot in good conscience say that the search undertaken was reasonable. As was appropriately noted by the New York Court of Appeals in a unanimous opinion,

> although the necessities for a public school search may be greater than one for outside the school, the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable.

Damages

It is well settled that school officials possess a qualified good faith immunity with respect to acts performed within the course of their duties. *Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975).

The boundaries of that immunity were defined as [illegible] as containing both objective and subjective elements. That is to say, immunity exists if the official acts in good faith and not in ignorance or disregard of settled indisputable principles of law. *Wood v. Strickland*, supra at 321, 95 S.Ct. 992. As was stated by the Court in Wood,

> As with executive officers faced with instances of civil disorder, school officials, confronted with student behavior causing or threatening disruption, also have an "obvious need for prompt action, and decisions must be made in reliance on factual information supplied by others (citations omitted)."
>
> . . . . . .
>
> We think there must be a degree of immunity if the work of the schools is to go forward; and, however worded, the immunity must be such that public school officials understand that action taken in good-faith fulfillment of their responsibilities and within the bounds of reason under all the circumstances will not be punished and that they need not exercise their discretion with undue timidity.
>
> . . . . . .
>
> Therefore, in the specific context of school discipline, we hold that a school board member is not immune from liability for damages under § 1983 if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student. That is not to say that school board members are "charged with predicting the future course of constitutional law." A compensatory award will be appropriate only if the school board member has acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that his action cannot reasonably be characterized as being in good faith.

It is clear that the defendants are entitled to a summary judgment on the issue of monetary damages under the test in *Wood*. The plaintiffs have failed to allege in their Complaint that the actions were not taken in good faith. Moreover, the fact that the law is markedly unsettled on the issue of student searches in schools is aptly illustrated by the diversity of results and theories contained in the cases cited earlier in this opinion. Therefore, the defendants are immune from liability for compensatory and punitive damages arising out of the acts complained of.

Appendix D

Hypothetical Cases

1. Sally was editor of the "Student Voice," the school paper at Central High. She wrote a strong editorial one day, criticizing the School Board and school administrators for their "reactionary educational policies," their "unwillingness to support exciting, relevant courses" and a speaker series on "victimless crimes like drugs, gambling and prostitution." The faculty advisor asked Sally to "tone down" her criticism, but she insisted on publishing it as it was. The principal then insisted that the article not be printed for it would cause an uproar and "hurt the public image and support for the schools." What should Sally do? What are her rights?

2. Word got around that the punch at the school dance was "spiked" by Dave and some of his friends. Dave had been a discipline problem in several classes that year. The vice-principal had a talk with several students who claimed that Dave did the "spiking." Then he had a long talk with Dave, who denied it all and wanted to cross-examine his accusers or have his lawyer there. The vice-principal said that he has heard enough and will suspend Dave for 5 days. Dave claims that his right to due process was violated. Was it? (Suppose the school expelled him?)

3. The principal of Emerson High is warned that a major gang fight is about to take place. In a surprise raid, the vice-principal and two policemen search through all the boys' lockers, looking for weapons. They also do a "pat down body search" of suspected leaders. The search produces no weapons but turns up some marijuana cigarettes and some illegal pills. The principal wants to suspend the students and have them face criminal charges. The students claim that their constitutional rights were violated. Who is right?

GLOSSARY

appeal - the bringing of a case to a higher court for a rehearing.

appellate court - a court which hears appeals from lower court

arrest - the step in a criminal proceeding where a suspect is taken into physical custody by authorized persons.

burden of proof - the responsibility for producing enough evidence to prove the facts in a lawsuit.

civil law - one of the two broad fields of law, involving legal disputes between private individuals.

constitution - a society's broadest, most fundamental principles of law. In the United States, federal and state constitutions are put into written form.

criminal law - one of the two broad fields of law, involving legal action taken by the state against a person accused of committing a crime or an offense against society.

cross-examination - questioning of a witness who has testified for the other side in a court case.

damages - money paid to a person who has been injured by the actions of another person.

defendant - the party in a civil lawsuit against whom legal action is brought; also the accused in a criminal case.

dissenting opinion - a separate statement by one or more appeals judges disagreeing with the ruling of the court's majority.

due process of law - a person's constitutional guarantee that all the proper steps will be followed for a fair hearing in a legal proceeding.

evidence - any of the various types of information that a court allows a lawyer to introduce in order to help prove facts in a legal proceeding. Such types include documents, records, physical objects, and the statements of a party and his witnesses.

judge - the presiding officer in a court whose job it is to administer the law and make sure a fair trial is conducted.

jurisdiction - the right to exercise authority in a given matter, such as the right of a court to hear and give judgment on a kind of legal action.

libel - a false written statement--published with ill will--that damages a person's character, reputation, or ability to make a living.

plaintiff - the party who begins a lawsuit against another (the defendant)

precedent - a former court decision used as a guide or model in deciding similar cases.

probable cause - reasonable grounds for belief that a person should be arrested or searched.

reasonable - fair, proper, moderate, suitable under the circumstances.

slander - false speech harmful to another person's reputation.

statute - a law enacted by the legislative branch of government.

testimony - an oral statement of evidence given by a witness under oath.

unconstitutional - that which violates the Constitution and, therefore, is not legal.

Appendix F

ISSUES AND COURT COMMENTS FOR DISCUSSION

**For teachers to use with advanced students--
in the classroom and/or in homework assignments.**

1. In the Tinker case, some of the students intentionally disobeyed the school policy against wearing armbands. This could lead to a discussion of a number of difficult and sensitive issues such as:

> What should you do if you think a school rule is unfair or unconstitutional?
> If you honestly think a rule is wrong, are you justified in breaking it?
> Does it make any difference if you break it secretly or openly? If you are willing to accept the punishment or if you try to avoid being punished?

This, of course, raises the issue of civil disobedience and might provide an opportunity to consider some of the writings of Thoreau, Ghandi, or Martin Luther King on this question.

2. In the Shanley case, Judge Goldberg made the following observations.

"One of the great concerns of our time is that our young people, disillusioned by our political process, are disengaging from political participation. It is most important that young people become convinced that our Constitution is a living reality, not parchment preserved under glass."

> What do you think Justice Goldberg means by this quotation? Do you think students are "disillusioned by our political process? How do you think students can be convinced that our Constitution is a "living reality?"

"Perhaps it would be well if those entrusted to administer the teaching of American history and government to our students began their efforts by practicing the document on which that history and government are based."

> What do you think Justice Goldberg is referring to?
> If you were a social studies teacher, how would you "practice" the Constitution?

3. In the Eisner case, Judge Kaufman suggested that the Board of Education formulate policy not only within the limits of the law, "but also with a sensitivity to some of the teaching reflected in relevant constitutional doctrine." The judge also wrote:

"The greater the generosity of the Board in fostering--not merely tolerating--students' free exercise of their constitutional rights, the less likely it will be that local officials will find their rulings subjected to unwieldy constitutional litigation."

> 1) If you were on the Stamford Board of Education, how would you rewrite the policy for distribution of student publications:
>
> a) "with a sensitivity to some of the teaching" reflected in the Constitution?
>
> b) with greater generosity in fostering free exercise of students' constitutional rights?
>
> 2) Judge Kaufman seems to see a difference between a policy "within the limits of the law," and one reflecting the teaching of "constitutional doctrine." But if the Board policy is "within the limits of the law," won't it have to be sensitive to "relevant constitutional doctrine?"

4. In Goss, Justice White wrote: "We stop short of construing the Due Process Clause to require, country-wide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses to verify his version of the incident. . . Further formalizing the suspension process . . . may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process."

> What did the Court mean when it said that "further formalizing the suspension process" might "make it too costly?"
> Do you agree that suspensions are or can be effective "as part of the teaching process?"
> Do you think that allowing students to "confront and cross-examine witnesses" make suspensions too costly or destroy their teaching effectiveness?

5. In Bellnier, Judge Munson wrote: "On balance the facts of this case mitigate against the validity of the search in issue. It is entirely possible that there was reasonable suspicion, and even probably cause, based upon the facts, to believe that someone in the classroom has possession of the stolen money. There were no facts, however, which allowed the officials to particularize with respect to which students might possess the money, something which has time and again . . . been found to be necessary to a reasonable search."

If there was probably cause to believe that someone in the class had the stolen money, why wasn't the search reasonable? Why do courts require information about particular students? Doesn't this lessen the chance that guilty students will be caught? If so, is this just?

Judge Munson also wrote: "The Court is not unmindful of the dilemma which confronts school officials in a situation such as this."

What dilemma do you think the judge was referring to?
How would you deal with it if you were a school official?

Appendix G

Student Resources

1. Jantzen, Steven. The Presidency, Congress, and the Supreme Court. New York: Scholastic Magazines, Inc., 1977.

2. Kelman, Maurice. The Supreme Court, Xerox Education Publications, 1973.

3. Newman, Jason, et. al. Street Law: A Course In Practical Law. St. Paul, Minnesota, West Publishing Company, 1977.

4. Pearson, Craig (ed.) Liberty Under Law. American Education Publications, 1963.

5. Ratcliff, Robert H. (ed.) Great Cases of the Supreme Court. Boston: Houghton Mifflin Company, 1975.

Appendix H

Teacher Resources

1. Cuban, Larry (ed.) Youth As a Minority: An Anatomy of Student Rights. National Council for the Social Studies, 1972.

2. Ladd, Edward T. Student Rights and Discipline. National Association of Elementary School Principals, 1975.

3. Levine, Alan. The Rights of Students, Avon Press, 1976.

4. Lewis, Anthony. The Supreme Court and How It Works. Random House, 1966. A well written account of the case of Clarence Gideon, a prisoner struggling to have his conviction overturned because he was too poor to hire a lawyer.

5. Schimmel, David and Fischer, Louis. The Civil Rights of Students, Harper & Row, Publisher, 1975.

6. Guidelines for Student Rights and Responsibilities, New York State Regents, State Department of Education, Washington Avenue, Albany, New York 12234. Free.

7. "You Have a Right," a condensation of The Rights of Students and Youth, free from the Youth Advocacy Project, 774 West Main Street, Rochester, New York 14611. In English and Spanish.

8. Teachers' Guide, Great Cases of the Supreme Court, Boston: Houghton Mifflin Company, 1975. This guide has an excellent section on audio-visual aids, including titles, annotations and addresses.

9. Vetter, Donald. Student Rights and Responsibilities: A Decision-Making Curriculum Guide. Maryland Law-Related Education Program, Carroll County Public Schools, Westminster, Maryland, 21157, (1978).

Appendix I

Pre-Test Answers

1. D
2. D
3. A
4. D
5. D
6. D
7. D
8. A
9. D
10. A
11. D
12. D
13. D
14. D
15. A
16. D
17. D
18. D
19. A
20. A

Unit Test Answers

1. b
2. c
3. d
4. c
5. d
6. d
7. d
8. c
9. d
10. a
11. b
12. a
13. d
14. d
15. c
16. d
17. c
18. d
19. d
20. a